

4 Official Opinions of the Compliance Board 24 (2004)

MINUTES – PROCEDURES – MINUTES MUST BE PREPARED WITHIN REASONABLE TIME – IF UNUSUAL CIRCUMSTANCES PRECLUDE MINUTES PREPARATION THROUGH CUSTOMARY MEANS, PUBLIC BODY MUST FIND ALTERNATIVE METHOD TO ACHIEVE TIMELY PREPARATION

March 16, 2004

*Mr. Brian Gnatt
Mr. Thomas Grant
The Gazette*

The Open Meetings Compliance Board has considered your complaint that the Poolesville Planning Commission violated the Open Meetings Act by failing to prepare minutes in a timely manner for several meetings. For the reasons stated below, the Compliance Boards finds that the Act was violated in this regard.

I

Complaint and Response

The complaint alleged that on January 14, 2004, the Poolesville Planning Commission approved minutes for seven prior meetings, the dates of which were as follows: July 17, July 23, and September 18, 2002; and September 17, October 15, November 12, and December 10, 2003. The complaint asserted that the delay in preparing the minutes for all of these meetings, except the meeting of December 10, 2003, was so excessive as to be a violation of the Act.

In a timely response on behalf of the Poolesville Planning Commission, Alan M. Wright, Esquire, acknowledged that the minutes “were, indeed, a long time in preparation,” but he described certain “extenuating circumstances which may explain the delay” These circumstances may be summarized as follows: The practice in Poolesville is that meetings of the Town Commissioners, the Planning Commission, and the Parks Board are recorded and transcribed. The transcripts are then used to prepare minutes. In August 2002, the transcriber that the Town had been using departed unexpectedly, “without leaving any forwarding address, taking several tapes with her (not the meetings in question). Time was lost while Town staff tried to locate her and then contacted the Town Attorney who enlisted a detective, all without success. During the process of trying to determine what had happened to the transcriber, meetings continued and tapes went untranscribed.”

A month or two after the former transcriber's disappearance, Poolesville engaged a new transcriber. "This person was instructed to deal with the backlog according to the following priority system: transcribe the new Town Commissioners' meetings first, then previous, untranscribed Town Commissioners' meetings, then current Planning Commission meetings, then previous Planning Commission meetings, and finally current and previous Park Board meetings. So, while the previous Planning Commission tapes were not at the very bottom of the list, they were not the top priority, that being given to meetings of the Town Commissioners."

According to the response, transcripts for the 2002 meetings of the Planning Commission were received on September 30 and October 22, 2003, and an item for the approval of these minutes placed on the November 12 agenda for approval. "On November 12, approval was deferred to the December 10 meeting because one of the Commissioners indicated that he had not received the minutes in advance." Meanwhile, the response indicated, minutes for the meetings of September 17 and October 15, 2003, were received by the Planning Commission on October 29 but were not placed on the agenda until the December 10 meeting. "At that time another of the Commissioners moved to postpone approval to the next meeting on January 14 [, 2004]. All the minutes were approved on January 14."

Finally, the response addressed the future processing of minutes: "We now have a very reliable transcriber who lives in Poolesville and has been getting the work back to the Town promptly. We do not expect a recurrence of this problem."

II

Discussion

For all meetings to which the Open Meetings Act applies, a public body must prepare minutes: "As soon as practicable after a public body meets, it shall have written minutes of its session prepared." §10-509(d) of the State Government Article, Maryland Code.¹ Minutes are an important element in furthering the General Assembly's policy declaration that "public business be performed in an open and public manner." §10-501(a)(1). Those who were not able to attend an open meeting can at least find out the items considered, actions taken, and votes recorded. §10-509(c)(1). The information about closed meetings that must be set forth in minutes helps enable the public to hold public bodies accountable for their decisions to close meetings. §10-509(c)(2).

¹ All statutory references in this opinion are to the State Government Article.

The salutary effects of minutes are diminished if a public body neglects its obligation to prepare written minutes “as soon as practicable after [it] meets.” Although the Act does not impose a rigid time limit, a public body may not “tolerate routine delays of several months or longer in preparing minutes. The cycle of minutes preparation should parallel the cycle of a public body’s meetings, with only the lag time needed to draft and review minutes. Although temporary staffing shortages or special circumstances (a key employee’s illness, for example) can be an acceptable reason for a delay in minutes, a public body may not justify a failure to prepare timely minutes by pointing to limited staff time or competing priorities. A public body must allocate the staff time needed to comply with the Act.” Compliance Board Opinion 99-18 (November 4, 1999), *reprinted in 2 Official Opinions of the Open Meetings Compliance Board* 87, 89.

We can understand that the sudden disappearance of the former transcriber caused unexpected complications in the preparation of the minutes. Nevertheless, an interval of more than a year between the holding of meetings and the disclosure of minutes to the public is patently unacceptable. Even if the Planning Commission had approved the minutes of the 2002 meetings on November 12, we would have found a violation. By contrast, had the Planning Commission acted aggressively to add approval of the minutes of the meetings of September 17 and October 15, 2003, to the November 12 agenda and then acted on the item, we would not have found a violation. In fact, however, the Planning Commission failed to act on these minutes, either then or a month later. Its lackadaisical approach to the matter denied the public access for another two months.²

We cannot specify in detail how the Planning Commission should have proceeded to prepare its minutes once the former transcriber was understood to have absconded. Perhaps notes from the meetings would have been a sufficient basis for minutes, or perhaps Planning Commissioners or volunteers might have listened to the tapes and made notes sufficient for minutes, without waiting for the tapes to be transcribed. In our view, the “extenuating circumstances” explained in the response amount to a decision that the Planning Commission would not expend the time or effort to comply with the Act. As we said in a recent opinion about the Poolesville Commissioners, the Planning Commission was “obliged to find a way to meet the Act’s requirement that open session minutes be available with reasonable promptness.” *4 Official Opinions of the Open Meetings Compliance Board* 1, 4 (2004).

² We do not find the interval between the November 12 and the approval of minutes on January 14 to be unreasonable. There is no violation in this regard.

III

Conclusion

In summary, we hold that the Poolesville Planning Commission violated the Open Meetings Act by failing to prepare minutes in a timely manner for its meetings on July 17, July 23, and September 18, 2002; and September 17 and October 15, 2003.

OPEN MEETINGS COMPLIANCE BOARD

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